

§ 140.914 Credits for improvements.

(a) Credit shall be made to the project for additions or improvements which provide for higher quality or increased service capability of the operating facility and which are provided solely for the benefit of the company.

(b) Where buildings and other depreciable structures of a company which are integral to operation of rail traffic must be replaced, credit shall be made to the project as set forth in 23 CFR 646.216(c)(2).

(c) No credit is required for additions or improvements which are:

(1) Necessitated by the requirements of the highway project.

(2) Replacements which, although not identical, are of equivalent standard.

(3) Replacements of devices or materials no longer regularly manufactured and the next highest grade or size is used.

(4) Required by governmental and appropriate regulatory commission requirements.

§ 140.916 Protection.

The cost of essential protective services which, in the opinion of a railroad company, are required to ensure safety to railroad operations during certain periods of the construction of a project, is reimbursable provided an item for such services is incorporated in the State-railroad agreement or in a work order issued by the State and approved by FHWA.

§ 140.918 Maintenance and extended construction.

The cost of maintenance and extended construction is reimbursable to the extent provided for in 23 CFR 646.216(f)(4), and where included in the State-Railroad Agreement or otherwise approved by the State and FHWA.

§ 140.920 Lump sum payments.

Where approved by FHWA, pursuant to 23 CFR 646.216(d)(3), reimbursement may be made as a lump sum payment, in lieu of actual costs.

§ 140.922 Billings.

(a) After the executed State-Railroad Agreement has been approved by FHWA, the company may be reim-

bursed on progress billings of incurred costs. Costs for materials stockpiled at the project site or specifically purchased and delivered to the company for use on the project may be reimbursed on progress billings following approval of the executed State-Railroad Agreement or the written agreement under 23 CFR 646.218(c).

(b) The company shall provide one final and complete billing of all incurred costs, or of the agreed-to lump sum, within one year following completion of the reimbursable railroad work. Otherwise, previous payments to the company may be considered final, except as agreed to between the SHA and the railroad.

(c) All company cost records and accounts relating to the project are subject to audit by representatives of the State and/or the Federal Government for a period of three years from the date final payment has been received by the company.

(d) A railroad company must advise the State promptly of any outstanding obligation of the State's contractor for services furnished by the company such as protective services.

[40 FR 16057, Apr. 9, 1975, as amended at 40 FR 29712, July 15, 1975; 62 FR 45328, Aug. 27, 1997]

PART 172—ADMINISTRATION OF ENGINEERING AND DESIGN RE- LATED SERVICE CONTRACTS

Sec.

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AUTHORITY: 23 U.S.C. 112, 114(a), 302, 315, and 402; 40 U.S.C. 541 *et seq.*; sec.1205(a), Pub. L. 105-178, 112 Stat. 107 (1998); sec. 307, Pub. L. 104-59, 109 Stat. 568 (1995); sec. 1060, Pub. L. 102-240, 105 Stat. 1914, 2003 (1991); 48 CFR 12 and 31; 49 CFR 1.48(b) and 18.

SOURCE: 67 FR 40155, June 12, 2002, unless otherwise noted.

§ 172.1 Purpose and applicability.

This part prescribes policies and procedures for the administration of engineering and design related service contracts under 23 U.S.C. 112 as supplemented by the common grant rule, 49

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CFR part 18. It is not the intent of this part to release the grantee from the requirements of the common grant rule. The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost. Recipients of Federal funds shall ensure that their subrecipients comply with this part.

§ 172.3 Definitions.

As used in this part:

Audit means a review to test the contractor's compliance with the requirements of the cost principles contained in 48 CFR part 31.

Cognizant agency means any Federal or State agency that has conducted and issued an audit report of the consultant's indirect cost rate that has been developed in accordance with the requirements of the cost principles contained in 48 CFR part 31.

Competitive negotiation means any form of negotiation that utilizes the following:

(1) Qualifications-based procedures complying with title IX of the Federal Property and Administrative Services Act of 1949 (Public Law 92-582, 86 Stat. 1278 (1972));

(2) Equivalent State qualifications-based procedures; or

(3) A formal procedure permitted by State statute that was enacted into State law prior to the enactment of Public Law 105-178 (TEA-21) on June 9, 1998.

Consultant means the individual or firm providing engineering and design related services as a party to the contract.

Contracting agencies means State Departments of Transportation (State DOTs) or local governmental agencies that are responsible for the procurement of engineering and design related services.

Engineering and design related services means program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or archi-

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tectural related services with respect to a construction project subject to 23 U.S.C. 112(a).

One-year applicable accounting period means the annual accounting period for which financial statements are regularly prepared for the consultant.

§ 172.5 Methods of procurement.

(a) *Procurement.* The procurement of Federal-aid highway contracts for engineering and design related services shall be evaluated and ranked by the contracting agency using one of the following procedures:

(1) *Competitive negotiation.* Contracting agencies shall use competitive negotiation for the procurement of engineering and design related services when Federal-aid highway funds are involved in the contract. These contracts shall use qualifications-based selection procedures in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541-544) or equivalent State qualifications-based requirements. The proposal solicitation (project, task, or service) process shall be by public announcement, advertisement, or any other method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract. Price shall not be used as a factor in the analysis and selection phase. Alternatively, a formal procedure adopted by State Statute enacted into law prior to June 9, 1998 is also permitted under paragraph (a)(4) of this section.

(2) *Small purchases.* Small purchase procedures are those relatively simple and informal procurement methods where an adequate number of qualified sources are reviewed and the total contract costs do not exceed the simplified acquisition threshold fixed in 41 U.S.C. 403(11). Contract requirements should not be broken down into smaller components merely to permit the use of small purchase requirements. States and subrecipients of States may use the State's small purchase procedures for the procurement of engineering and design related services provided the total contract costs do not exceed the